

Laboratory operated by Massachusetts Institute of Technology, and Software Engineering Institute operated by Carnegie Mellon) may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Public Law 103-337).

[60 FR 61598, Nov. 30, 1995, as amended at 69 FR 65092, Nov. 10, 2004]

235.070 Indemnification against unusually hazardous risks.

235.070-1 Indemnification under research and development contracts.

(a) Under 10 U.S.C. 2354, and if authorized by the Secretary concerned, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

(1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—

(i) Results from a risk that the contract defines as “unusually hazardous;”

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to grant indemnification. Include the approved definition in the contract.

[56 FR 36416, July 31, 1991, as amended at 64 FR 51076, Sept. 21, 1999]

235.070-2 Indemnification under contracts involving both research and development and other work.

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Public Law 85-804. Public Law 85-804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Public Law 85-804 must also comply with FAR subpart 50.4.

235.070-3 Contract clauses.

When the contractor is to be indemnified in accordance with 235.070-1, use either—

(a) The clause at 252.235-7000, Indemnification Under 10 U.S.C. 2354—Fixed Price; or

(b) The clause at 252.235-7001, Indemnification Under 10 U.S.C. 2354—Cost-Reimbursement, as appropriate.

235.071 Additional contract clauses.

(a) Use the clause at 252.235-7002, Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States or its outlying areas involving research on live vertebrate animals.

(b) Use the clause at 252.235-7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(c) Use the clause at 252.235-7010, Acknowledgement of Support and Disclaimer, in solicitations and contracts for research and development.

(d) Use the clause at 252.235-7011, Final Scientific or Technical Report, in solicitations and contracts for research and development.

[56 FR 36416, July 31, 1991, as amended at 60 FR 29500, June 5, 1995; 70 FR 35545, June 21, 2005]

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 236.1—General

Sec.

236.102 Definitions.

Subpart 236.2—Special Aspects of Contracting for Construction

236.201 Evaluation of contractor performance.

236.203 Government estimate of construction costs.

236.204 Disclosure of the magnitude of construction projects.

236.206 Liquidated damages.

236.213 Special procedures for sealed bidding in construction contracting.

236.213-70 Additive or deductive items.

236.270 Expediting construction contracts.

236.271 Cost-plus-fixed-fee contracts.

236.272 Prequalification of sources.

236.273 Network analysis systems.

236.102

236.274 Construction in foreign countries.

Subpart 236.5—Contract Clauses

236.570 Additional provisions and clauses.

Subpart 236.6—Architect-Engineer Services

236.601 Policy.

236.602 Selection of firms for architect-engineer contracts.

236.602-1 Selection criteria.

236.602-70 Restriction on award of overseas architect-engineer contracts to foreign firms.

236.604 Performance evaluation.

236.606 Negotiations.

236.606-70 Statutory fee limitation.

236.609 Contract clauses.

236.609-70 Additional provision and clause.

Subpart 236.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36421, July 31, 1991, unless otherwise noted.

Subpart 236.1—General

236.102 Definitions.

(1) A-E means architect-engineer.

(2) *Construction activity* means an activity at any organizational level of the DoD that—

(i) Is responsible for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities; and

(ii) Receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

(3) *Marshallese firm* is defined in the provision at 252.236-7012, Military Construction on Kwajalein Atoll—Evaluation Preference.

(4) *Network analysis system* means recognized scheduling systems that show the duration, sequential relationship, and interdependence of various work activities, e.g., critical path method.

48 CFR Ch. 2 (10-1-05 Edition)

(5) *United States firm* is defined in the provisions at 252.236-7010, Overseas Military Construction-Preference for United States Firms, and 252.236-7011, Overseas Architect-Engineer Services-Restriction to United States firms.

[56 FR 36421, July 31, 1991, as amended at 62 FR 2857, Jan. 17, 1997; 63 FR 11538, Mar. 9, 1998]

Subpart 236.2—Special Aspects of Contracting for Construction

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* Use DD Form 2626, Performance Evaluation (Construction), instead of SF 1420.

(c) *Distribution and use of performance reports.* (1) Send each contractor performance evaluation report to the central data base immediately upon its completion.

(A) The central data base—

(1) Is operated by—U.S. Army Corps of Engineers, Portland District, ATTN: CENWP-CT-I, PO Box 2946, Portland, OR 97208-2946, Telephone: (503) 808-4590.

(2) Keeps reports on file for six years.

(B) For computer access to the files, contact the Portland District for user log-on and procedures.

(2) Use performance records when making responsibility determinations under FAR 9.1.

(A) For each contract expected to exceed \$1,000,000, retrieve all performance records on file in the central data base for all prospective contractors that have a reasonable chance of being selected for award. The central data base will provide—

(1) Overall current performance ratings;

(2) Descriptions of contracts on which ratings are based (e.g., type of facility, contract value, applicable performance elements); and

(3) A telephone number to obtain transcripts and documentation of pertinent evaluation details.

(B) Consider using the performance records in the data base for lower value contracts and to assess a contractor's performance record for reasons other